



BOARD OF INQUIRY (*Human Rights Code*)

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IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended;

AND IN THE MATTER OF the complaint by Wilfred Etienne dated May 19, 1992, alleging discrimination in employment on the basis of race, colour, place of origin and ethnic origin.

B E T W E E N :

Ontario Human Rights Commission

- and -

Wilfred Etienne

Complainant

- and -

Westinghouse of Canada Limited

Respondent

DECISION

Adjudicator : Sri-Guggan Sri-Skanda-Rajah

Date : June 23, 1997

Board File No: BI-0058-95

Decision No : 96-0014

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PAY EQUITY COMMISSION
150 EGLINTON AVE. E., 6TH FL.
TORONTO, ONT. M4P 1E8

Board of Inquiry (*Human Rights Code*)

150 Eglinton Avenue East

5th Floor, Toronto ON M4P 1E8

Phone (416) 314-0004 Toll free 1-800-668-3946 Fax: (416) 314-8743

TTY: (416) 314-2379 TTY Toll free: 1-800-424-1168

APPEARANCES

Ontario Human Rights Commission)	
)	Paul Martial, Counsel
)	
Wilfred Etienne, Complainant)	On his own behalf,
)	Carla Adams, Agent
)	William Holder, Agent
)	
Westinghouse of Canada Limited,)	
Corporate Respondent)	Ross Dunsmore, Counsel
)	George Vusic, Student at Law
)	
Danny Steplock,)	
Gord Gracie,)	
Dave Hunter,)	Andy Patterson, Agent
Joe Molnar,)	
Personal Respondents)	

PRELIMINARY ISSUES

First Motion to Dismiss for Delay

1. On the first day of this hearing the Corporate Respondent, Westinghouse, moved that the proceedings be stayed for unreasonable delay. The representative of the Personal Respondents supported this motion. The Ontario Human Rights Commission (OHRC) and Mr. Etienne objected.

2 In the matter at hand, while there was delay to which all parties had contributed, no evidence was produced to show that there was actual prejudice to the Respondents' ability to mount a full and fair defence to the allegations.

3. The Respondents were unable to meet the test set out in *Nisbett v. Manitoba Human Rights Commission*, (1993) 18 C.H.R.R. D/504, where the Manitoba Court of Appeal held that delay in the performance of a legal duty may amount to an abuse of process if it results in prejudice of such a kind and degree as to significantly impair the ability of a party to receive a fair hearing. The Court found in that case that, though the delay was unreasonable, it had not caused prejudice of this nature to Nisbett's ability to defend himself. In the circumstances of the instant complaint, the motion to stay the proceedings was denied.

OHRC Withdrawal

4. The OHRC requested leave to withdraw from the proceedings on the basis that their public interest mandate had been satisfied. The OHRC was unable to provide more detail without prejudicing the hearing. The OHRC was permitted to withdraw from the proceedings.

Removal of Personal Respondents as Parties

5. At the commencement of this hearing the parties were:

- (1) the OHRC;
- (2) Wilfred Etienne - complainant;
- (3) Westinghouse Canada Inc. - the corporate respondent; and
- (4) Danny Steplock - personal respondent;
Gord Gracie - personal respondent;
Dave Hunter - personal respondent;
Joe Molnar - personal respondent.

6. A motion brought by the four personal respondents to have themselves removed as parties to the proceedings on the basis that a settlement had been reached with the complainant and that they had fulfilled the terms of that settlement.

7. Mr. Etienne opposed this motion and sought an adjournment to seek legal representation. He also took the position that he needed French language interpretation. Mr. Etienne was granted an adjournment to retain and instruct counsel. The Board further agreed that interpretation services would be provided to him.

8. On resumption, Mr. Etienne remained unrepresented. The Board heard conflicting submissions as to whether a settlement between Mr. Etienne and the Personal Respondents existed. The Board took care that nothing was disclosed to it with regard to settlement discussions between Mr. Etienne and the Corporate Respondent.

9. Mr. Etienne took the position that no settlement existed with the Personal Respondents because settling with the Corporate Respondent was part of the settlement package he had agreed

upon. Since no settlement was reached with Westinghouse there was no settlement with the Personal Respondents.

10. Mr. Andy Paterson, on behalf of the Personal Respondents, testified under oath as to the terms of the settlement and produced documentation to support his position.

11. The Board questioned Mr. Etienne who agreed that the Personal Respondents had in fact done what had been agreed and, that in recognition of the resolution of his dispute with them, he had shaken hands with each of them. He contended, nevertheless, that he believed that to be only part of the overall settlement involving all Respondents.

12. In an oral ruling the Board concluded that there had been a settlement of the complaint against the Personal Respondents and ordered that the four Personal Respondents be removed as parties to the complaint.

Second Motion to Dismiss

13. The Corporate Respondent brought an amended motion to have the hearing stayed or dismissed on the basis that the Complainant had:

- (1) failed to comply with the Board's directives;
- (2) failed to follow the Board's Rules of Practice: and
- (3) failed to provide witness lists and witness statements or synopses to the Corporate Respondent.

14. The Corporate Respondent also submitted that the Complainant was obliged to prepare and file his own documents and had failed to do so. Further, Westinghouse took the position that the Complainant could not rely on the OHRC documents disclosed as a matter of practice by the OHRC

to all respondents. Finally, it was argued that the Complainant, by repeatedly seeking adjournments and then failing to retain counsel, was delaying the hearing and abusing the Board's process.

15. The Board determined that failure to follow the Board's disclosure rules would be dealt with when Mr. Etienne sought to introduce the evidence. The Board determined that the complaint disclosed sufficient information about the allegations and that, together with the OHRC's documents, the Respondent had enough information to know the case it was required to meet. Finally, upon referral of a complaint to the Board, the Board is obliged to hear and determine whether any rights under the *Code* had been breached. In these circumstances the Board would hear evidence to determine whether a *prima facie* case of discrimination existed. If the Board concluded that Mr. Etienne established a *prima facie* case, the onus would then shift to Westinghouse to respond.

16. It should be noted that, Mr. Etienne made several separate requests for adjournments to retain counsel. The Board attempted to accommodate him in this but, when Mr. Etienne repeatedly failed to follow through on retaining counsel, he was advised that no further adjournments would be granted for this purpose and, moreover, that hearing days would now be scheduled on a peremptory basis.

ISSUES IN DISPUTE

17. The issues to be decided by the Board were:

- (1) was Mr. Etienne discriminated against at Westinghouse by reason of his race, colour, place of origin, or ethnic origin;
- (2) was the Corporate Respondent aware of the discrimination related to the above grounds; and
- (3) if the Corporate Respondent was aware of the discrimination, did it take all necessary steps to properly investigate and attempt to ensure that Mr. Etienne received equal treatment in his employment and was free from harassment in the workplace.

THE EVIDENCE OF THE COMPLAINANT

18. Mr. Etienne wished to call Mr. Courtney Morgan, a black man and former employee of Westinghouse, to give evidence. Mr. Morgan was not an employee of Westinghouse at the time relevant to Mr. Etienne's complaint (March - April 1992) and could not provide direct evidence relating to the facts in dispute. Mr. Etienne claimed that Mr. Morgan would give evidence about his (Morgan's) similar experiences at Westinghouse. No witness statement or synopsis of Mr. Morgan's evidence was provided to the Corporate Respondent.

19. The Board ruled that, whatever the nature of Mr. Morgan's evidence, it was premature at this stage. Prior to considering its admissibility, the Board had to be satisfied that a *prima facie* case of a breach of Mr. Etienne's rights had been established. Mr. Etienne sought an adjournment to retain counsel which the Board refused.

20. Mr. Etienne was sworn and began his testimony. He produced several documents that he wished to rely on. It was apparent that many of these documents were prepared by the OHRC. The Corporate Respondent challenged the production and admission of these documents on the basis that the Complainant was either not the author, or his authorship was limited to written comments of a highly prejudicial nature.

21. The Board noted that pursuant to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22 as amended, the Board is not bound by the strict laws of evidence, and that it could admit the documents as evidence. The Board determined that, in this instance, it would identify the documents as exhibits and, as the testimony unfolded, determine relevance, issues of prejudice, and weight. In the Board's view this was a practical way of proceeding given that the Complainant was unrepresented and unfamiliar with the technicalities of introducing documentary evidence.

22. Mr. Etienne testified that he had been repeatedly harassed on the job by his co-workers. He said that the harassment related to him in the following ways: as a black person of African heritage; as a person of Haitian ethnic origins; as a French speaking black man who had lived in Montreal, and as if his origins were in the Province of Quebec. He also testified that he had reported the harassment to Westinghouse's management, but that management did nothing to prevent such harassment. He believed that there was a conspiracy among those who had dealt with his complaint to get him fired from Westinghouse.

23. He testified that, while at Westinghouse, whenever 'Quebec' was in the news his co-workers would insult him by insulting Francophones and directing the words at him. He showed considerable reluctance to repeat the exact phrases used by his co-workers. After being informed of the need to know precisely what was alleged, he recalled as an example references to the Quebec issue as "fucking frog bastard" being directed at him. In addition, he recalled phrases directed at him that included the following: "ass- hole/arse-hole", "cock-sucker", and "prick".

24. He identified Danny Steplock, Dave Hunter, Gord Gracie, and Joe Molnar as the co-workers who had harassed him in this manner. In addition, he said that the Chief Foreman, Doug Meikle, harassed him.

25. He testified that shortly after he started working at Westinghouse he was harassed by co-workers, and he brought this to the attention of his supervisor who took some action. He said the harassment abated but only for awhile.

26. On March 26, 1992, he asked Mr. Meikle, to whom he had been referred by Mr. Twamley, his immediate Supervisor, permission to leave work early because he was feeling ill. He said that he was directed by Mr. Meikle to go and see Westinghouse's nurse. On attending there he was sent by the nurse to see a Dr. Shoreham. He said that Dr. Shoreham physically examined him and ordered some laboratory tests. She concluded that there was nothing physically wrong with him and

pronounced him fit to return to work. In his view Dr. Shoreham ignored the real cause of his problems, namely being harassed by his co-workers. She did not refer him to someone else with regard to his illness, nor did she give him a follow-up appointment.

27. On his return from Dr. Shoreham's office to Westinghouse, Mr. Etienne was upset with how things had been handled by all concerned that day. He proceeded to Human Resources because he wanted to "quit". There he spoke to a woman identified as Angela who wrote down his concerns and told him that she would pass the information along to her boss.

28. He then went to see Mr. Meikle, as he had been required to do. He met with Mr. Meikle and Mr. Boris Nusko, one of his former supervisors. During the course of this meeting Mr. Etienne spoke in some detail about the harassment by his co-workers. Some discussion of his concerns followed and he recalled that he rejected their suggestion of being referred to the employee assistance program. Following the meeting he was then given a pass by Mr. Meikle to go home.

29. He testified that the next day, March 27, 1992, he had a meeting with Ms Mazzetti (Manager, Employee Relations) and Mr. Meikle. He said that during that meeting he referred to his earlier problems at Westinghouse and how they had been resolved for awhile. He again gave details of his current problems and identified the perpetrators to both Ms Mazzetti and Mr. Meikle. Following this meeting he was interviewed by Mr. Meikle and gave him further information about the harassment particularising the activities of Danny Steplock and the other co-workers.

30. Subsequently, Mr. Meikle advised him that he had investigated the matter and had heard conflicting stories about it and that he would not be taking any action.

31. Mr. Etienne testified that from that point onwards he was subjected to increased harassment by his co-workers. As an example, he said that in early April 1992 he was provoked by Mr. Hunter who returned from lunch one day and proceeded to call him various names including a "piece of shit",

“fucking ass-hole”, “fucking cock sucker”, and “fucking bastard”. This was witnessed by a co-worker he knew only as Kevin. This incident was dealt with by Mr. Twamley, his supervisor. According to Mr. Etienne, Mr. Hunter confessed to Mr. Twamley that he had attacked Mr. Etienne because Mr. Etienne had reported Mr. Steplock. Mr. Etienne understood from Mr. Twamley that a report on the incident would go to the Chief Foreman. There was no evidence that this report was ever prepared or sent. Mr. Twamley did not testify.

32. When Mr. Etienne next came to work, April 13, 1992, Mr. Meikle confronted him about a complaint against him made by three of his co-workers. Mr. Etienne characterised Mr. Meikle’s tone towards him as if addressed to a ‘servant’(by a master). In his view he was being treated as if he were already guilty. He concluded that a conspiracy existed between Westinghouse management, Mr. Meikle, and his co-workers to get him fired. At that time he was very upset and felt that he had to quit. He took his tool-box and left the premises.

33. Although Mr. Etienne had earlier indicated he would call other witnesses (for example, Mr. Morgan) he did not do so. Mr. Etienne was advised by the Board that, since he had no other witnesses, the Complainant’s case was closed. He was informed that, when the matter resumed, it would be to hear the Corporate Respondent’s evidence.

34. When the hearing resumed, Mr. Etienne was represented by Ms Carla Adams as Agent for Mr. Chile Eboe-Osuji. The Board had no formal communication from Mr. Eboe-Osuji to indicate that he was now on the record as counsel for Mr. Etienne.

35. Ms. Adams sought an adjournment of the proceedings to call further evidence in support of the complaint. She indicated that she was under the impression that the OHRC was still a party to the hearing. Ms Adams was unable to provide any information about the nature, content or relevance of the proposed evidence that she was seeking to adduce on behalf of the Complainant.

36. Having heard all of the submissions, and in light of the Board's earlier rulings in this matter, the Board declined to grant the adjournment. In this regard the Board, for the benefit of all parties and the particular benefit of Ms Adams, referred to the numerous opportunities and adjournments already afforded the Complainant to attempt to retain counsel as well as the repeated explanations about peremptory hearings.

EVIDENCE OF THE RESPONDENT

37. Dr. Shoreham was the Respondent's first witness. She said that on March 26, 1992, Mr. Etienne had been referred to her by Westinghouse. At that time Mr. Etienne seemed distressed and complained about chest pains. Mr. Etienne had stressed to her that his chest pains were connected to 'problems at work'. She carried out a physical examination and ordered some laboratory tests. She concluded that there was no problem with Mr. Etienne's heart and declared him fit to return to work.

38. In response to the Board's questions, Dr. Shoreham indicated that she did not explore the nature of Mr. Etienne's problems at work. She also indicated to the Board that she did not arrange to do a follow-up with Mr. Etienne, nor do a specific referral regarding the effects of such work related problems.

39. The next witness was Mr. Meikle. Mr. Meikle was Mr. Etienne's Chief Foreman when the events complained of occurred. He did not work on the shopfloor but performed supervisory functions only. He testified that on March 26, 1992 he was called by Westinghouse's nurse who inquired whether Mr. Etienne was being disciplined because Mr. Etienne was "crying like a baby". Mr. Meikle also testified that when he met with Mr. Etienne later that day Mr. Etienne was still crying and wanted to quit. When he asked Mr. Etienne why he wanted to quit, Mr. Etienne attributed it to problems with other employees "at the shop". Mr. Etienne was not forthcoming with names and the only person he identified was Danny Steplock whom Mr. Etienne alleged had threatened him by

saying "I am going to get you before I retire". He finally gave Mr. Etienne a written pass to go home that day. Mr. Meikle stated that he regarded the words complained about by Mr. Etienne as "shop talk".

40. Mr. Meikle made notes of his meeting with Mr. Etienne that day. The original notes were not produced to the Board but a document bearing the date March 26, 1992, and said to be a transcript of the notes, had already been filed by Mr Etienne as Exhibit 21. During his testimony Mr. Meikle adopted the contents as reflecting the notes that he had made at the time.

41. Mr. Meikle interviewed Mr. Steplock on March 27, 1992. Exhibit 20, which had already been filed by Mr. Etienne, is a typed transcription of the notes of that interview. The original notes were not filed with the Board. Exhibit 20 contains the following phrases attributed to Mr. Steplock: "He is an ass hole!"; "he is a prick"; "you get an ass hole like him in the place. He is an no good Bastard. I do not know what he means by harassment, if he thinks for one minuet (*sic*) it is racist, my wife is Italian for God sake"; "I am going to see him when he comes in"; "He better not come near me. I am going to talk to the other guys in the shop". The same document contains the following phrases attributed to Mr. Meikle: "Danny do not do anything stupid"; and "Don't do anything in the shop". During his testimony Mr. Meikle adopted the contents as reflecting the notes that he had made at the time.

42. Exhibit 20 also records the following exchange: Mr. Steplock to Mr. Meikle: "Why do you not interview the other guys they will tell you the same thing". Mr. Meikle replies: "I am interviewing you because you are the only person that Wilf made the allegation against".

43. In his evidence, Mr. Meikle specifically denied that Mr. Etienne had identified racial discrimination as the nature of his problems. Mr. Meikle was unable to explain why, when he agreed that Mr. Etienne had identified having problems with other employees and which was confirmed by

his interview with Mr. Steplock, he failed to interview anyone else. He admitted that he had no training in identifying or investigating racism or racial discrimination.

44. The next witness was Mr. Boris Nusko, Foreman, who had been Mr. Etienne's supervisor before Mr. Meikle. Mr. Nusko had been asked by Mr. Meikle to meet with him and Mr. Etienne. From that meeting he understood Mr. Etienne's complaint to be about shop-floor language. Mr. Nusko testified that he made no notes of that meeting at the time. On June 18, 1992 he compiled a document based on his recollection of the March 26, 1992 meeting. That document had already been filed by Mr. Etienne as Exhibit 25. In his evidence, Mr. Nusko said the document fairly represented his memory about the meeting of March 26, 1992

45. From that document it is clear that Mr. Etienne said enough at the meeting for Mr. Nusko to be aware that several persons had approached Mr. Etienne at his work and that Mr. Etienne had problems with the manner in which they approached and spoke to him. Mr. Nusko identified the language that Mr. Etienne was complaining about as "swearing". According to Mr. Nusko, he asked Mr. Etienne in Mr. Meikle's absence "... if any of the problems he was having were racially motivated". He said that Mr. Etienne responded without hesitation that they were not. During his oral testimony Mr. Nusko recalled asking that question of Mr. Etienne and Mr. Etienne's reply. When asked why he questioned Mr. Etienne on that issue he explained that he was prompted to do so by the fact that Mr. Etienne was obviously "black" and that he wanted to be sure that Mr. Etienne agreed that the problem was language and not race.

46. Mr. Nusko's notes contain the following in the first paragraph, "Toward the end of March, Doug Meikle called me into M. Dunn's office, to have a talk with W. Etienne. There had been several discussions in the recent days, about stress for Wilf on the job, and requirements for him to take holidays, to "get away from everything". The notes give no indication as to whether Danny Steplock's name was the only name mentioned by Mr Etienne as the cause of his problems.

47. Ms Vicki Mazzetti was the next witness. A transcription of her notes of that meeting with Mr. Etienne, dated March 26, 1992, had already been filed as Exhibit 19, by Mr. Etienne. That document is titled: "Conversation between W. Etienne and Vicki Mazzetti". The original notes were not produced to the Board.

48. The transcription of Ms Mazzetti's notes are quoted in part as follows:

- Q: "Are you being harassed?"
Q: "Are the jokes offensive to you?"
A: "Some jokes yes, they mostly use bad language, heavy language."
Q: "Do they use.....swear words?" ; "Does it upset you?"
A: "Yes, I was upset"
Q: "Did you report it to your supervisor?"
A: "I reported it about 2 years ago now, the jokes had too many bad words. The supervisor spoke to the employees and the employees cooled off. I had a pain in my chest yesterday.....I took enough yesterday.....there was no incident....I just felt pain."
Q: "When was last incident?"
A: "No incident.... just a lot of games. Puts pressure on a person if they don't like somebody. Approximately 3 weeks ago D. Steplock said...."I'm going to get you before my retirement"
Q: "What do you think he meant by that?"
A: "He's going to get me fired...(D.Steplock) says....."
.....
Q: "Are you having problems outside of work.....outside of the plantat home?"
A: "No"
Q: "Anybody else bothering you?"
A: "Everybody is....all they guys down there, they have a cliché..... they want to get me fired".

49. In her testimony Ms. Mazzetti described the investigative process as follows:

'At first the supervisor does the initial investigation. This is followed by an investigation by Human Resources. We take only the facts, no hearsay is taken. We talk to witnesses and we talk to supervisors'.

50. In her testimony Ms. Mazzetti acknowledged the following:

- * At Westinghouse there were no specific procedures for handling race based complaints.
- * No specific policy statement by Westinghouse existed with regard to racial discrimination or harassment..
- * No specific workshops were held at Westinghouse with regard to race based complaints, racial discrimination or harassment.
- * The investigative procedure used would have been the same as would apply to standard complaints

51. She said the Union becomes involved only if the employee uses the grievance procedure in the collective agreement. She confirmed that, in her recollection, Mr. Etienne had denied this was any form of racial, ethnic, colour, French or Haitian discrimination. Finally, she was quite surprised to hear later that Mr. Etienne had quit his job.

52. Ms. Mazzetti concluded her testimony by stating that she did not see this matter as a human rights issue at all. In her capacity of Manager, Employee Relations, she had no prior knowledge of anything about the personal respondents that would in any way have substantiated Mr. Etienne's complaint. She maintained that the problem was nothing more than that of the use of bad language; namely 'shop-talk'. She was unable to recall when she became aware that Mr. Etienne had filed a complaint with the OHRC.

ANALYSIS

53. The evidence in this complaint requires the Board to make a finding based on credibility of the witnesses. A leading case on the issue of determining credibility is the British Columbia Court of Appeal's decision in *Faryna v. Chorny* (1952) 2 D.L.R.354 at p. 356-357:

"Opportunities for knowledge, powers of observation, judgement, and memory, ability to describe clearly what he (or she) has seen

and heard, as well as other factors, combine to produce what is credibility.....In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”.

54. Applying this test to the instant case requires the Board to determine whose evidence, the Complainant's or the Respondent's, when taken as a whole has the ring of truth to it in the sense that it is in harmony with the preponderance of probabilities.

55. Mr. Etienne's evidence is that on March 26, 1992 he informed:

Mr. Twamley that he wanted to go home at 12:00 noon;

Mr. Meikle that he was tired and ill and was referred to the Nurse;

The Nurse that he was ill and was having chest pains;

Dr. Shoreham that he had chest pains and that they resulted from the situation at the workplace;

Angela at Human Resources of the details of his concerns; and

Mr. Meikle and Mr. Nusko about what his co-workers were doing and saying to him in harassing him.

56. Mr. Etienne's evidence is that on March 27, 1992 he informed:

Ms. Mazzetti, with Mr. Meikle present, about his harassment by his co-workers, about what action he had taken sometime earlier when he had a similar experience, and about the threat made to him by Mr. Steplock.

57. Mr. Etienne's evidence is that in early April 1992 he informed:

Mr. Twamley about Mr. Hunter's behaviour towards him and of the increased harassment of him by a clique of co-workers.

58. It should be noted that, although Ms. Mazzetti, Mr. Meikle and Mr. Nusko deny that Mr. Etienne specified or particularized any racial or ethnic harassment or discrimination, they readily acknowledge that he complained of the use of bad language.

59. If one examines the notes compiled by Meikle, Nusko and Mazzetti, it is evident that Mr. Etienne indicated that he was being harassed by co-workers, that he was afraid and felt threatened, that he was under stress, and that he was unwilling to work under those conditions.

60. Dr. Shoreham acknowledged that Mr. Etienne attributed his state of distress and his chest pains to his situation in the workplace. This is consistent with Etienne's testimony.

61. Mr. Nusko, although categorically denying that Mr. Etienne had attributed his problems to racism, was sufficiently aware of the potential of such problems that, on his own volition, he raised the subject with Mr. Etienne.

62. Mr. Etienne told Mr. Meikle that Mr. Steplock was harassing him and had threatened him. Mr. Meikle in his testimony stated that Mr. Steplock, being sixty-four years old and of a small body frame, could not have made threats to Mr. Etienne. Yet Mr. Meikle's interview notes indicate that he cautioned Steplock about making threats. This is supportive of Mr. Etienne's evidence that Steplock in fact threatened him and that management knew that to be so.

63. The transcription of the notes of Mr. Meikle's interview of Mr. Steplock shows that Mr. Steplock on his own volition recognized that Mr. Etienne was alleging that he was subjected to racial harassment.

64. Mr. Etienne testified that there was "clique" that worked in concert in harassing him. It should be noted that the three complainants against Mr. Etienne in April 1992, are none other than Steplock, Hunter and Gracie, three of the four original personal respondents. This assertion of

Mr. Etienne, is supported by the admission by Dave Hunter to Ms. Mazzetti that he called Etienne an "ass hole" for reporting Steplock.

65. The Board, in the light of these facts, concludes that the April 13, complaint to Mr. Meikle was "clique" response by Messrs Steplock, Hunter and Gracie for the complaint made to management by Mr. Etienne. Mr. Meikle failed to recognize this as the clique's reprisal action and contributed to the workplace atmosphere by reprimanding Etienne as if their allegations against him had merit.

66. What were Westinghouse's obligations once Mr. Etienne had complained about how co-workers treated him at Westinghouse? The Board is of the view that upon being advised of the substance of Mr. Etienne's allegations it was incumbent on the management of Westinghouse to carry out a full and fair investigation of the complaint and, if the complaint was substantiated, to take the necessary action to provide the complainant with a harassment free workplace.

67. Westinghouse argues that Mr. Etienne never identified that he was being harassed because of his race or colour or ethnic origin. It is not necessary however for him to do so. Had the management properly investigated they would have discovered that the harassment was more than mere 'shop talk', but harassment directed specifically at Mr. Etienne as a member of a protected group under the Code.

CONCLUSIONS

68. Considering the evidence in its totality, the Board prefers the testimony of Mr. Etienne about his experiences at his workplace. Mr. Etienne's testimony and the various exhibits, when taken as a whole, detail a story that is consistent and credible. When one applies the test as set out in *Faryna v. Chorny (supra)*, it is Mr. Etienne's story that is reasonable.

69. S. 5(2) of the *Human Rights Code*, R.S.O. 1990, c. H. 19, as amended provides:

“Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap”.

70. “Harassment” is defined in s.10(1) of the *Code* as follows:

“Harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

71. The Board accepts the following:

- (1) that Mr. Etienne was subjected to a course of vexatious comment and conduct by his co-workers that ought reasonably to have been known to be unwelcome and therefore he was harassed by them;
- (2) that Mr. Etienne was subjected to harassment at Westinghouse from shortly after starting to work there in 1989. That he brought the matter to the attention of his supervisor at that time and as a result of action taken by that supervisor the problem abated;
- (3) that in 1992, Mr. Etienne was subjected to harassment on an ongoing basis by his co-workers. That such harassment included the use of such words as “frog”, “bastard”, “cocksucker”, “prick”, “asshole”, “fucking”, and phrases formed by combinations thereof;
- (4) that Mr. Steplock threatened Mr. Etienne by saying he “was going to get him before (he) retired” or words to that effect;
- (5) that Mr. Etienne informed the following individuals of his work related problems:
 - Dr. Shoreham;
 - Ms. Angela ;
 - Mr. Meikle;
 - Mr. Nusko;
 - Ms. Mazzetti; and
 - Mr Twamley;
- (6) that Mr. Etienne provided enough information to various managers at Westinghouse that they should have concluded that he was being subjected to harassment by his co-workers.

72. In this case the evidence clearly indicates that although Westinghouse was aware that Mr. Etienne's complaint was about more than one co-worker and was aware of several witnesses who could have assisted the investigation, no one other than Mr. Etienne and Mr. Steplock was interviewed by Westinghouse. Furthermore, the persons conducting the investigation, by their own admission, were not trained in investigating, nor equipped with the tools to investigate complaints of racial or other harassment prohibited by the *Code*. In the result, Westinghouse's investigation of Mr. Etienne's complaints was grossly inadequate.

73. In the absence of evidence that the words and phrases complained of by Mr. Etienne were not directed at him, and that use of "shop talk" and its impact was neutral throughout the workplace, the Board concludes that Mr. Etienne, a black man of Haitian origin, who speaks English with difficulty and with an accent, and who is more comfortable using the French language, was harassed because of his race, colour, ethnic origin and place of origin. It is sufficient to support a finding of discrimination that the complainant was differentially treated in the workplace and that the targeting of the complainant for differential treatment was linked to his race, colour, ethnic origin and place of origin.

R E M E D I E S :

74. Following the Board's second ruling declining to dismiss or stay the proceedings against the Corporate Respondent, the Corporate Respondent moved that the evidence relating to liability and damages be heard together: i.e. that the receipt of evidence relating to damages should not be left until after the issue of liability was determined. The Complainant did not object and the Board agreed to proceed in that manner.

75. The evidence of Mr. Etienne did not include any evidence of special damages or of the mitigation thereof nor did it include any documentary evidence on which Mr. Etienne could have

been cross-examined. As there was no evidence produced to the Board on special damages the Board can make no order in this regard.


76. Mr. Etienne sought reinstatement of employment at Westinghouse. However, his own oral testimony and the contents of the notes of Meikle, Nusko and Mazzetti indicate that Mr. Etienne was afraid, felt threatened, was under stress and was unwilling to work under those conditions. The Board in these circumstances is not satisfied that reinstatement is a viable/desirable remedy in this instance.

77. Mr. Etienne's evidence discloses a vexatious course of conduct by co-workers that began shortly after he began to work at Westinghouse in 1989, that he brought his concerns to the attention of Westinghouse's management and that it ceased for a short period of time. His evidence was also that there was a continuum of this when ever the Quebec issue was in the news. Mr. Etienne's evidence in this regard about the events of March and April 1992 was clear and cogent. His experiences in March and April 1992 were again brought to the attention of Westinghouse's management. Westinghouse's management failed in their duty to provide Mr. Etienne a workplace free of harassment.

78. Mr. Etienne suffered considerable mental anguish as a result this discriminatory harassment by his co-workers and suffered further mental anguish in having brought it to the attention of Westinghouse's management who were unable to resolve it satisfactorily.

79. The Board having heard submissions as to the appropriate quantum of damages orders the Respondent Westinghouse Canada Inc. to pay to Mr. Etienne the sum of \$7,500.00. If this amount is not paid within 60 days of the date of this decision, post judgement interest shall accrue in accordance with the *Courts of Justice Act*, R.S.O. 1990. c. C.43.

Dated at Toronto this 23rd day of June, 1997:


Sri-Guggan Sri-Skanda-Rajah
Member, Board of Inquiry

